



Setti D. Warren  
Mayor

# CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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|                                |                   |
|--------------------------------|-------------------|
| Public Hearing Date:           | February 15, 2011 |
| Land Use Action Date:          | April 5, 2011     |
| Board of Aldermen Action Date: | May 2, 2011       |
| 90-Day Expiration Date:        | May 10, 2011      |

DATE: February 11, 2011

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development  
Eve Tapper, Chief Planner for Current Planning <sup>ET</sup>  
Derek Valentine, Senior Planner

SUBJECT: **Petition #137-10(2)** SHARAD GANDBHIR petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for an accessory apartment in an existing detached structure, to locate three parking spaces closer than five feet from the street and within the front setback, and to locate a 6.5 foot retaining wall in the side setback at 298-300 ADAMS STREET, Ward 1, on land known as SBL 12, 2,9C, containing 11,529 square feet of land in a district zoned MULTI-RESIDENCE 1, REF: Section 30-24, 30-23, 30-5(b)(4),30-9(h)(1),30-19(g)(1), AND 30-19(m) of the City of Newton Revised Zoning Ordinance, 2007.

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



### **EXECUTIVE SUMMARY**

The property is currently improved with a two-family residence and a detached structure at the rear of the property. The detached structure has been vacant since at least 1987. It was at this time that the primary two-family residence was constructed at the front of the lot. The owner would like to renovate the rear structure and seeks a special permit to create an accessory apartment in the structure. No exterior changes are proposed to the rear structure. The petitioner has submitted twice for a zoning review memorandum, incorporating departmental feedback with each subsequent submission. An earlier special permit application was filed but was withdrawn by the applicant after the Fire Department expressed concerns about emergency access to the rear structure. The current proposal includes improved access to the rear of the parcel and has been approved by the Fire Department. The structure under consideration consists of 1,120 square feet of living space. There is a large storage room connected to the existing kitchen of the building. If this were included in the floor area calculations, the structure would exceed the maximum square footage for an accessory apartment. The Commissioner of Inspectional Services has determined that if the internal connection is removed, the square footage of the storage room would not count towards the accessory apartment and could not be approved.

The proposed use requires five parking spaces, which the petitioner will provide, but relief is requested in order to locate three of these spaces within five feet of the front property line (two of the spaces are pre-existing). To provide adequate fire access to the rear structure, the petitioner is proposing a cellular grass paver driveway along with a 6½-foot retaining wall within the side setback. Since the accessory structure is already in place and the proposed unit will only have one bedroom, the Planning Department believes that reusing the existing structure will have a minimal effect on the surrounding neighborhood. The proposed reuse is preferable to keeping the structure vacant and allowing it to deteriorate through neglect where it could potentially become a public nuisance or hazard. Furthermore, modest-sized units add to the diversity of housing options available in Newton. The Planning Department recommends approval of the petition with conditions described below.

#### **I. SIGNIFICANT ISSUES FOR CONSIDERATION**

When hearing this request, the Board should consider whether:

- The proposed accessory apartment in a detached structure is not substantially more detrimental to the neighborhood, since the structure already exists and no significant exterior alterations are proposed.
- It is preferable to see an existing structure used rather than to deteriorate in vacancy.
- A retaining wall in excess of four feet will not pose a drainage problem on surrounding properties and will enhance the safety of the occupants by providing

better access for emergency personnel.

- The removal of existing pavement and the reduction of some impervious surface will help to improve the quality of water resources as recommended by the *2007 Newton Comprehensive Plan*.
- The proposal is consistent with the *2007 Newton Comprehensive Plan*, as it will help to preserve the existing housing stock while increasing the diversity of housing options available in the City.
- Due to the existing topography of the property and the location of structures on it, locating more than two parking spaces within the front setback is appropriate since an alternative location would be impractical and tenants currently park two vehicles in a driveway that is within the front setback and within five feet of Adams Street.
- Circulation to and around the site is appropriate given the type and number of vehicles expected to serve three residential units (a total of five bedrooms proposed between both structures).

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The property is located on Adams Street between Washington Street and Wiltshire Road. It is within a vast area east of Adams Street zoned Multi-Residence 1. Across Adams Street from the subject site is a large area within a Multi-Residence 2 zone. Land use in the area is a mix of single- and multi-family residential, as well as a large property across the street from the site that is owned by Our Lady of Help Christian Church.

### B. Site

The site consists of 11,529 square feet of land that slopes up from the street. A 3,312 square-foot duplex with garage-under parking is at the front of the property, facing Adams Street. Both units in the duplex are two-bedroom units. The lot is “L”-shaped and has an accessory building at the rear of the property, which has not been used for decades. A concrete walkway leads from the parking area near the street to the accessory structure at the rear of the property.

### III. PROJECT DESCRIPTION AND ANALYSIS



Existing two-family



Existing accessory structure

#### A. Land Use

The property is being used as a two-family residence. By acquiring a special permit, the petitioner would like to maintain the two-family use in the main structure and add an accessory apartment in the accessory building. The owner will occupy one of the three units once renovations are complete.

**Owner occupancy is required in order to have an accessory apartment. The petitioner does not currently live on-site, but will be required to establish residency there prior to the issuance of a Certificate of Occupancy for the accessory unit.**

#### B. Building and Site Design

There are no changes proposed to the accessory building at this time other than cosmetic upgrades. A bituminous pavement area to the northeast of the accessory building will be removed as will the concrete walkway to the north of the main house. A concrete and grass paver access way will be located on the north side of the main house to provide safe access for emergency responders. These pavers were requested by the Newton Fire Department and were determined to count towards required open space by the Commissioner of Inspectional Services provided that residents or visitors to not park in this area. Based on this determination, this petition will result in a net decrease in the amount of impervious coverage on the site and an increase in the percentage of open space provided. This will make the property conforming with regard to Newton's open space requirements. A number of shrubs will be removed on the south side of the main house to make room for a new bituminous walkway leading from the driveway to the accessory structure and a 6½-foot retaining wall would be located at the far end of the driveway.

**The petitioner should provide detailed specifications on the retaining wall construction to the Engineering Department prior to the issuance of a building permit.**

**The proposed accessory apartment should be brought into compliance with all applicable safety and building codes.**

**The Planning Department recommends a condition that requires the petitioner to eliminate access from the kitchen area to the attached storage room in order to remain within the square footage parameters for accessory apartments.**

C. Parking and Circulation

The proposed use of the property requires a total of five parking spaces on-site. The petitioner will provide three parking spaces in the existing driveway in front of the main residential building and two parking spaces in the two garages located under the building. Three of these spaces will be located closer than five feet from the street and within the front yard setback. Relief is required to locate more than two parking spaces in the setback, and to locate any parking spaces within five feet from the street. The grass paver area is for fire truck access and a template has been provided indicating that a fire truck can maneuver onto the site.

**The Planning Department recommends a condition limiting this grass paver area to emergency access only and not for parking or storage of vehicles. This area shall be kept clear of snow with vegetation established and maintained by the petitioner.**

D. Landscape Screening

Since the structure is already in place, the visual impact of this petition on the surrounding neighborhood will be negligible. No additional landscaping or screening is required.

IV. TECHNICAL REVIEW

- A. Technical Considerations (Section 30-15). The Zoning Review Memorandum, dated December 1, 2010 (*SEE ATTACHMENT "A"*), provides an analysis of the proposal with regard to zoning. The petitioner is requesting permission to renovate an accessory structure in order to create an accessory apartment. Newton Zoning Ordinance Section 30-9(h)(1) allows for this use with approval of a special permit. The petitioner seeks relief under Section 30-5(b)(4) to locate a 6½-foot wall within the setbacks. The petitioner also needs a waiver to locate three parking spaces within the front setback and less than five feet from the street under Sections 30-19(g)(1) and 30-19 (m).
- B. Comprehensive Plan. This petition helps to preserve the existing housing stock while increasing the diversity of housing options available in the City.

- C. Engineering Review: Since there is actually a decrease in impervious coverage, site plan review by the Engineering Department is not required; however, the petitioner should provide detailed specifications on the construction of the retaining wall over four feet in height for review by the Engineering Department.
- D. Fire Department Review: The Newton Fire Department has approved the proposal for fire access.

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum (*SEE ATTACHMENT "A"*), the petitioners are seeking the following approvals or relief:

- Section 30-19(h)(1) to allow an accessory apartment in a detached structure
- Section 30-5(b)(4) to allow a 6½-foot retaining wall within a setback
- Sections 30-19(g)(1) and 30-19(m) to allow more than two parking spaces in the front setback and parking spaces less than five feet from the street

VI. PETITIONERS' RESPONSIBILITIES

The petitioner should provide specifications on the construction of the retaining wall for review by the Newton Engineering Department.

The petitioner should provide a fire truck movement template stamped and signed by a licensed engineer or land surveyor.

**ATTACHMENTS**

**ATTACHMENT A:** ZONING REVIEW MEMORANDUM DATED DECEMBER 1, 2010

**ATTACHMENT B:** ZONING MAP

**ATTACHMENT C:** LAND USE MAP

**ATTACHMENT D:** DRAFT BOARD ORDER #137-10(2)

## ***Zoning Review Memorandum***

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Date: December 1, 2010

To: John Lojek, Commissioner of Inspectional Services

From: Seth Zeren, Chief Zoning Code Official  
Eve Tapper, Chief Planner for Current Planning<sup>ET</sup>

Cc: Sharad Gandbhir, Property Owner  
Bryan Parmenter, Surveyor on behalf of applicant  
Ouida Young, Associate City Solicitor  
John Lojek, Commissioner of Inspectional Services

**RE: Request for an accessory apartment in a detached structure**

| <b>Applicant: Sharad S. Gandbhir</b>  |   |
|---|---|
| <b>Site:</b> 298R Adams Street<br><b>Zoning:</b> MR1<br><b>Current use:</b> Two-family residence with a vacant detached structure | <b>SBL:</b> Section 12, Block 2, Lot 9C<br><b>Lot Area:</b> 11,529 sq. ft.<br><b>Proposed use:</b> Two-family residence with an accessory apartment in the detached structure |

**Background:**

The subject property consists of an 11,529 sq. ft. lot currently improved with a two-family residence and a detached structure at the rear of the lot. According to the applicant, the rear structure has been vacant for many years. The owner would like to renovate the existing detached structure to create an accessory apartment. Two previous zoning memos have been written on this same project (March 1, 2010 and April 29, 2010). However, the Fire Department required changes to the previous proposal to allow for fire truck access that required substantial alteration to the site plan and petition proposal. This memo reflects these new plans and supersedes both previous memos.

The following review is based on plans and materials submitted to date as noted below.

**Plans and materials reviewed:**

- Architectural Drawings, signed by Anand Lele, engineer; dated 3/17/10
  - First Floor Plan
  - Second Floor Plan
- Existing Site Plan, signed by Bryan Parmenter, surveyor; dated 10/19/10
- Proposed Site Plan, including zoning table, signed by Bryan Parmenter, surveyor; dated 10/19/10

### **Administrative determinations:**

1. The applicant proposes to renovate and re-inhabit an existing vacant structure as an accessory apartment. The applicant must obtain a special permit from the Board of Aldermen to allow an accessory apartment in a detached building in the MR1 zone, per Section 30-9(h)(1).
2. The existing accessory structure has been vacant and unused since at least 1987, the year in which the primary two-family residence use was constructed. The table below describes the dimensional requirements of an accessory structure. The structure is a legal nonconforming accessory structure, having 1,162 square feet of ground floor area where no more than 700 square feet are allowed. No changes to the structure are proposed.

| <b>§30-15(m)</b>                 | <b>Required/Allowed</b> | <b>Existing</b>          | <b>Proposed</b>  |
|----------------------------------|-------------------------|--------------------------|------------------|
| Ground floor area                | 700 square feet         | <b>1,162 square feet</b> | <b>No change</b> |
| Setbacks–<br>accessory structure | 5 feet                  | 9.1 feet                 | No change        |
| Stories                          | 1.5                     | 1.5                      | No change        |
| Height                           | 18 feet                 | Not provided*            | No change        |

\* Not provided by applicant, as no changes are proposed

3. The subject site is comprised of a lot created after December 7, 1953 and is subject to post-1953 “new lot” density and dimensional controls applicable to lots in the MR1 zone.

| <b>MR1 Zone</b>   | <b>Required/Allowed</b> | <b>Existing</b> | <b>Proposed</b> |
|-------------------|-------------------------|-----------------|-----------------|
| Lot size          | 10,000 sq. ft.          | 11,529 sq. ft.  | No change       |
| Frontage          | 80 feet                 | 100.5 feet      | No change       |
| Max. Lot Coverage | 30%                     | 23.5%           | No change       |
| Min. Open Space   | 50%                     | <b>49.2%</b>    | 54.3%           |

The proposed site plan, including described removal of bituminous pavement, would make the site’s open space conforming with the requirement of Section 30-15 Table 1. In order to meet the Fire Department’s requirement for vehicle access to the rear of the site, the applicant’s site plan shows a proposed drive on the northwest side of the property consisting of permeable concrete pavers with grass growing around them. The Commissioner of Inspectional Services determined that these grass pavers, because they were a required safety feature and were permeable to storm water, could be counted as open space – with the requirements that the grass be regularly cut, the snow be removed in the winter, and that at no time shall this drive be used for parking.

4. Section 30-9(h)(1)(c) limits the size of space the accessory apartment to be a minimum of 400 square feet and a maximum of 1,200 square feet. The applicant



submitted a floor plan that calculates the square footage of the accessory apartment as 1,120 square feet. The plans designate an area of the existing accessory structure as “storage.” This storage cannot be included in the accessory apartment because the square footage would be higher than allowed by the Zoning Ordinance. Therefore, the door from the storage area to the proposed kitchen must be eliminated so that the storage is not internally connected to the apartment.

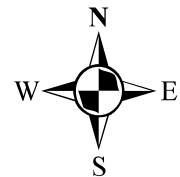
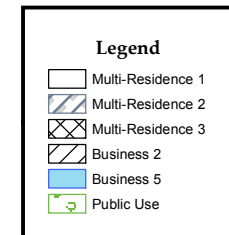
5. Section 30-19(d)(19) requires one on-site parking stall for an accessory apartment. The existing two-family dwelling on the front of the lot requires four parking spaces (two per dwelling unit per Section 30-19(d)(1)). Therefore, the total parking requirement for the lot is five spaces. Section 30-19(g)(1) allows one parking space per dwelling unit within the front or side setback. “However, in no case shall a parking stall be setback less than five (5) feet from the street.” The applicant submitted a site plan showing the proposed location of these required spaces. On the proposed plan, three parking spaces are located in the front setback, where two are allowed by-right. All three of these spaces are located less than five feet from the front property line. The applicant must obtain a special permit under Section 30-19(m) to allow the third parking stall within the front setback as well as to permit three parking spaces closer than five feet from the street.
6. In order to accommodate the drive required by the Fire Department for access to the rear of the lot, a retaining wall of greater than four feet is necessary. This wall would be 6.5 feet at its highest point and located within the side setback. Section 30-5(b)(4) requires a special permit to place a retaining wall of four or more feet in any setback. To construct this wall as proposed the applicant must obtain a special permit from the Board of Aldermen per 30-5(b).
7. See “Zoning Relief Summary” below.

| <b><i>Zoning Relief Summary</i></b> |  |                               |
|-------------------------------------|--|-------------------------------|
| <b><i>Ordinance</i></b>             |  | <b><i>Action Required</i></b> |
|                                     | <b>Use</b>   |                               |
| §30-9(h)(1)                         | Allow an accessory apartment in a detached structure   | SP per §30-24                 |
|                                     | <b>Site</b>  |                               |
| 30-5(b)(4)                          | Allow a 6.5 foot retaining wall in a setback   | SP per §30-24                 |
|                                     | <b>Parking</b>   |                               |
| §30-19(g)(1),<br>§30-19(m)          | Allow more than two parking spaces in the front setback and parking spaces less than five feet from the street | SP per §30-24                 |

# Zoning

## 298-300 Adams St

*City of Newton,  
Massachusetts*



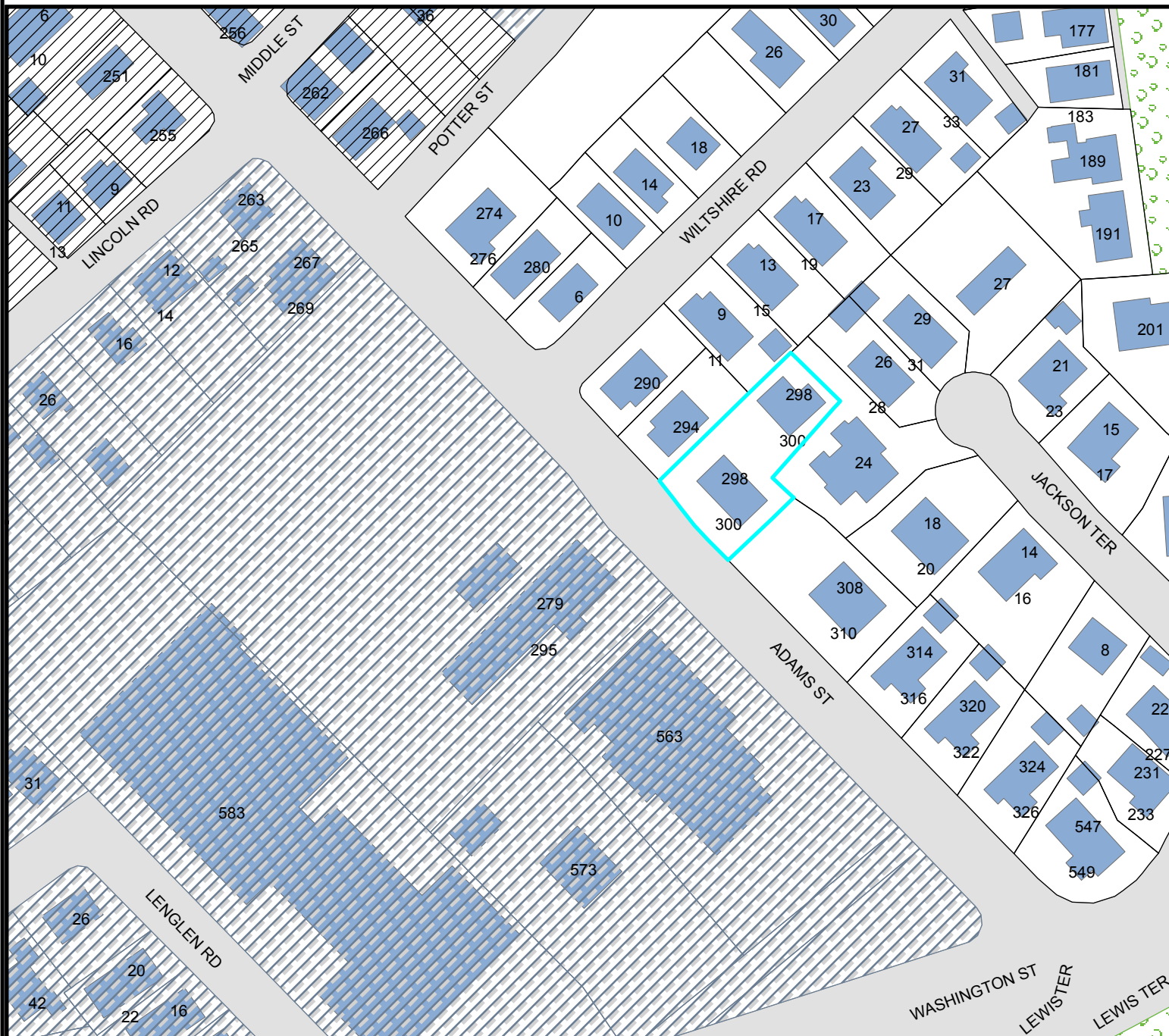
The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas Greenfield

0 12.525  
Feet

**MAP DATE: February 10, 2011**

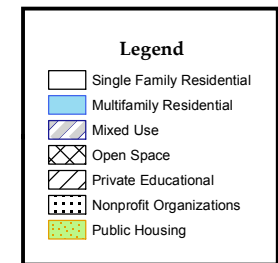
# ATTACHMENT B



# Land Use

## 298-300 Adams St

*City of Newton,  
Massachusetts*



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CITY OF NEWTON, MASSACHUSETTS  
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**MAP DATE: February 10, 2011**

# ATTACHMENT C

## ATTACHMENT D

**DRAFT**  
#137-10(2)

### CITY OF NEWTON IN BOARD OF ALDERMEN

February 15, 2011

#### ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, hereby grants the following SPECIAL PERMIT/SITE PLAN APPROVAL for an accessory apartment in an existing detached structure, to locate three parking spaces closer than five feet from the street and within the front setback, and to locate a 6.5-foot retaining wall in the side setback in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefore, through its Chairman, Alderman Ted Hess-Mahan.

The Board finds that:

1. The proposed accessory apartment in a detached structure is not substantially more detrimental to the neighborhood, since the structure already exists and no significant exterior alterations are proposed.
2. It is preferable to reuse an existing structure, rather than allow it to remain vacant and deteriorate.
3. A retaining wall in excess of four feet will not pose a drainage problem on surrounding properties and will enhance the safety of the occupants by providing better access for emergency personnel.
4. The removal of existing pavement and the reduction of some impervious surface will help to improve the quality of water resources as recommended by the *2007 Newton Comprehensive Plan*.
5. The proposal is consistent with the *2007 Newton Comprehensive Plan*, as it will help to preserve the existing housing stock while increasing the diversity of housing options available in the City.

6. Due to the existing topography of the property and the location of structures on it, locating more than two parking spaces within the front setbacks is appropriate, since an alternative location would be impractical. Tenants currently park in a driveway, which is within the front setback and within five feet of Adams Street.

PETITION NUMBER: #137-10(2)

PETITIONER: Sharad Gandbhir

LOCATION: 298-300 Adams Street, Ward 1, on land known as Sec 12, Blk 2, Lot 9c, containing approx. 11,529 sf of land

OWNER: Sharad Gandbhir

ADDRESS OF OWNER: P.O. Box 29, Templeton, MA 01468

TO BE USED FOR: Accessory Apartment

CONSTRUCTION: Wood-frame

EXPLANATORY NOTE: Section 30-9(h)(1) to allow an accessory apartment in a detached structure, Section 30-5(b)(4) to allow a 6.5-foot retaining wall in a setback, Sections 30-19(g)(1) and 30-19(m) to allow more than two parking spaces in the front setback and parking spaces less than five feet from the street.

ZONING: Multi-Residence 1 District.

Approved, subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping, and other site features shall be located and constructed consistent with the following plans:
  - “Proposed Grading Plan, 298-300, 298 R Adams Street”, dated September 21, 2010, signed and stamped by Brian G. Parmenter, Professional Land Surveyor.
  - “Fire Truck Turning Movement, 298 R Adams Street”, dated July 26, 2010, neither signed nor stamped.

2. The accessory structure shall be brought into compliance with all building and safety codes.
3. The grass paver emergency access area should be kept clear of snow and ice and shall have vegetation established and maintained by the petitioner. There shall be no parking or storage of vehicles in this area and it should remain clear at all times.
4. There shall be no interior access from the accessory apartment to the storage area adjacent to the kitchen.
5. No building permit shall be issued pursuant to this SPECIAL PERMIT/SITE PLAN APPROVAL until the petitioner has:
  - a. recorded with the Registry of Deeds for the Southern District of Middlesex County a certified copy of this Board Order granting this SPECIAL PERMIT/SITE PLAN APPROVAL.
  - b. filed a certified copy of such recorded notices with the Clerk of the Board, the Inspectional Services Department and the Department of Planning and Development.
  - c. provided detailed specifications on the retaining wall construction to the Engineering Department for approval.
  - d. provided a fire truck turning radius diagram signed and stamped by a licensed engineer.
6. No portion of the building pursuant to this SPECIAL PERMIT and SITE PLAN APPROVAL shall be occupied until the petitioner has:
  - a. filed with the Clerk of the Board, the Department of Inspectional Services and the Department of Planning and Development, a statement by a registered engineer certifying compliance with Condition #1.